



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
REGIONAL POLICY

GUIDANCE NOTE ON PARTIAL CLOSURE

(UNDER ARTICLE 88 OF REGULATION (EC) NO 1083/2006)

DISCLAIMER:

"This is a document prepared by the Commission services. On the basis of the applicable EU Law, it provides technical guidance to the attention of public authorities, practitioners, beneficiaries or potential beneficiaries, and other bodies involved in the monitoring, control or implementation of the Cohesion policy on how to interpret and apply the EU rules in this area. The aim of this document is to provide Commission's services explanations and interpretations of the said rules in order to facilitate the implementation of operational programmes and to encourage good practice(s). However this guidance note is without prejudice to the interpretation of the Court of Justice and the General Court or evolving Commission decision making practice."

1. INTRODUCTION

The 2007-2013 regulatory framework for the implementation of cohesion policy provides for a number of simplifications compared to the previous programming period. Amongst the new mechanisms regarding the simplification of the financial management of the programmes is the partial closure of programmes as set out in Article 88 of Regulation (EC) No 1083/2006¹, as amended².

The present guidance note on partial closure has been prepared with the objective of providing the Member States with an overview of the requirements that they need to fulfil when partially closing operational programmes of the programming period 2007-2013.

Furthermore, it describes the practical application and financial and audit implications of the procedure.

2. REFERENCE

Article 88 of Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999, as amended

Partial closure

1. *Partial closure of operational programmes may be made at periods to be determined by the Member State.*

Partial closure shall relate to operations completed during the period up to 31 December of the previous year. For the purposes of this Regulation, an operation shall be deemed completed where the activities under it have been actually carried out and for which all expenditure by the beneficiaries and the corresponding public contribution have been paid.

2. *Partial closure shall be made on the condition that the Member State sends the following to the Commission by 31 December of a given year:*

(a) *a statement of expenditure relating to the operations referred to in paragraph 1;*

(b) *a declaration for partial closure in accordance with Article 62(1)(d)(iii).*

3. *Any financial corrections made in accordance with Articles 98 and 99 concerning operations subject to partial closure shall be net financial corrections.*

However, in cases where the irregularities in operations which have been subject to a declaration of partial closure are detected by controls carried out by the Member State, Article 98(2) and (3) shall apply. The statement of expenditure referred to in point (a) of paragraph 2 of this Article shall be adjusted accordingly.

Certain aspects related to partial closure are also addressed in Articles 62(1)(d)(iii) and 90(1)(b) of Regulation (EC) No 1083/2006, as amended, and in Articles 19 and 40 of

¹ OJ L 210 of 31.7.2006.

² As amended by Council Regulation (EU) No 539/2010 of 16 June 2010, OJ L 158/1 of 24.6.2010

Commission Regulation (EC) No 1828/2006³, as amended⁴. These Articles are quoted in Annex 1 to this guidance note.

3. GENERAL PRINCIPLES

Partial closure is optional for Member States at periods determined by them, not an obligation. It is therefore the responsibility of the competent national authorities to decide whether they want to make a partial closure. It can be performed once or several times during the programming period for the same programme (Article 88(1) of Regulation (EC) No 1083/2006, as amended), but not more than once a year, at the initiative of the Member State. As several national authorities are involved in this process – managing authority, certifying authority and audit authority – they will need to be coordinated, ready and organised in order to perform such a procedure.

Partial closure can cover any operation completed during the period up to 31 December of the previous year (year n-1), whether it be in year n -1 or in a previous year (Article 88 (1) of Regulation (EC) No 1083/2006, as amended).

What is an operation?

According to Article 2 (3) of Regulation (EC) No 1083/2006, an operation is "*a project or group of projects selected by the managing authority of the operational programme concerned or under its responsibility according to criteria laid down by the monitoring committee and implemented by one or more beneficiaries allowing achievement of the goals of the priority axis to which it relates*".

When is an operation completed?

According to Article 88(1)(2) of Regulation (EC) No 1083/2006, as amended "*(...) an operation shall be deemed completed where the activities under it have been actually carried out and for which all expenditure by the beneficiaries and the corresponding public contribution have been paid*".

An operation may therefore be considered completed if the following three cumulative criteria are met:

- activities have been actually carried out (no further activity required to complete the operation);
- all expenditure by beneficiaries has been paid (no further payments to be made by beneficiary);
- the public contribution has been paid to the beneficiary (no further payments to be made to beneficiary).

³ OJ L 45 of 15.2.2007.

⁴ Amended by Commission Regulation (EC) 846/2009 of 1 September 2009, OJ L 250 of 23 September 2009.

All these cumulative criteria have to be fulfilled by 31 December of year n-1. If one of these criteria is not fulfilled, the operation cannot be included in a partial closure exercise.

It is strongly recommended to include in partial closure only operations for which the authorities concerned are satisfied that, prior to the submission of the two closure documents, all necessary controls have been completed to provide reasonable assurance on the legality and regularity of the expenditure. For example, an operation completed in 2009 could be included under the partial closure sent in 2010, if all (including the audit of a sample of operation in accordance with Article 16 (1) of Commission Regulation (EC) No 1828/2006, as amended) control steps are completed, or under a subsequent partial closure exercise.

Furthermore, operations for which legal proceedings are on-going cannot be included in partial closure.

4. DOCUMENTS TO BE SENT TO THE COMMISSION BY 31 DECEMBER OF YEAR 'N' AND PERIODS FOR RETENTION OF SUPPORTING DOCUMENTS

Partial closure documents

Partial closure of an operational programme is subject to submission of the following documents listed in Article 88(2) of Regulation (EC) No 1083/2006, as amended:

- 1) A statement of expenditure relating to the operations completed by 31 December of year 'n-1' for which partial closure is requested. Pursuant to Article 20(3) of Regulation (EC) No 1828/2006, as amended, in order to proceed to the partial closure of an operational programme, the certifying authority has to prepare and send to the Commission, following the request of the managing authority, a statement of expenditure in the format set out in Annex XIV to Regulation (EC) No 1828/2006, as amended (see Annex 3 to this guidance note)⁵;
- 2) A declaration for partial closure assessing the legality and regularity of the expenditure paid under the completed operations. In accordance with Article 62(1)(d)(iii) of Regulation (EC) No 1083/2006, as amended, the preparation and submission of this declaration is the responsibility of the audit authority. A model of this declaration is given in the Annex IX to Regulation (EC) No 1828/2006, as amended (see Annex 2 to this guidance note).

The managing authority, in agreement with the certifying authority, should transmit the statement of expenditure for a partial closure together with information on the related operations to the audit authority so that it can draw up the required declaration.

Given that the statement of expenditure for partial closure is not accompanied by a certification of expenditure, expenditure covered by this statement must have already been certified by the certifying authority through a previous certificate and statement of

⁵ The amount indicated in the column "Total amount of eligible expenditure paid by beneficiaries and certified" in Annex XIV to Regulation (EC) No 1828/2006, as amended, is related to the amount indicated in the column "Total amount of eligible expenditure paid by the beneficiaries" in Annex X thereto.

expenditure and application for payment in accordance with Annex X to Regulation (EC) No 1828/2006, as amended.

In accordance with Article 40 (2)(j) and (k) of Regulation (EC) No 1828/2006, as amended, these documents shall be registered in the computer system for data exchange (SFC 2007).

Documents relating to the partial closure of operations should only be presented to the Commission in cases where the audit authority is in a position to provide an unqualified declaration in relation to the legality and the regularity of the expenditure paid, as reflected in the Model declaration for partial closure given in Annex IX of Regulation (EC) No 1828/2006, as amended.

Availability of documents

In accordance with Article 90 (1) (b) of Regulation (EC) No 1083/2006, as amended, all supporting documents regarding expenditure and audits related to operations subject to partial closure have to be kept available for a period of three years following the year in which partial closure took place. This three-year period runs from 1 January of the year following that in which the submission of the declaration for partial closure and the statement of expenditure as set out in Article 88 (2) of Regulation (EC) No 1083/2006, as amended, is made via SFC 2007. Nonetheless, in accordance with Article 90 (1) of Regulation 1083/2006, as amended, this three-year period can be interrupted in the case of a legal proceeding or at the duly motivated request of the Commission.

For example, if the two partial closure documents have been sent on 15 September 2010 for operations completed in 2007, 2008 or at the latest by 31 December 2009, the availability of supporting documents regarding expenditure and audits for all the operations concerned will have to be ensured until 31 December 2013.

The Commission will notify the Member State concerned of the receipt of the two required partial closure documents in conformity with the regulatory provisions within two months of receipt and will confirm at the same time the period for the retention of the documents related to the operations concerned.

However, Article 19(3) of Regulation (EC) No 1828/2006, as amended, provides that for operations subject to partial closure, the managing authority must keep information necessary for the purposes of evaluation and reporting, including its accounting records of operations and the data on implementation listed in Annex III to the above mentioned Regulation, for the full period of three years following the closure of the programme. This is to ensure that documents relevant for managing authorities' final implementation reports, for evaluation and for performance audits are available, if required. For example, in the case of ESF-type of operations, detailed documents such as timesheets, CVs, application files for participants, detailed training programmes, etc, do not have to be kept after the end of the three-year period applicable to the operation. However, aggregated data on the operations' outputs will have to be kept by the managing authority, for evaluation and reporting purposes, for the full period of three years following the closure of the programme.

The list of all completed operations which have been subject to partial closure must also be made available by the managing authority to the Commission on request, and should be kept by the managing authority for the full period of three years following the closure of the programme for audit trail purposes. This list must also identify by which exercise of partial

closure the completed operation is covered in order to facilitate monitoring of the three-year deadline. When requesting the partial closure for operations concerned by financial engineering instruments as defined in Article 44 of Regulation (EC) No 1083/2006, as amended, the specific requirements of Article 78(6) of Regulation (EC) No 1083/2006, as amended, should be taken into account.

The periods for retention of documents set out above are without prejudice to the following:

- the rules governing State aid under Article 87 of the Treaty;
- stricter national rules imposing longer periods for retention of the documents linked to the management of operational programmes.

5. FINANCIAL AND AUDIT IMPLICATIONS

Partial closure requires the identification of expenditure for closed operations already incorporated in previous declarations of expenditure and does not give rise to any additional reimbursement by the Commission in respect of those operations. Partial closure is without prejudice to the provisions concerning pre-financing, automatic decommitment, and the limit on payments (pre-financing and interim payments) of 95% of the total fund contribution of an operational programme.

In accordance with the provisions of Article 55(3) of Regulation (EC) No 1083/2006, as amended, in case of projects whose revenue cannot be objectively estimated in advance, the net revenue generated within five years of the completion of an operation, including closed operations, will have to be deducted from the expenditure declared to the Commission. Moreover, according to Article 55(4) of Regulation (EC) No 1083/2006, as amended, where it is established that an operation has generated net revenue that has not been taken into account under Article 55(2) or (3), such revenue will be deducted by the certifying authority at the latest at the time of submission of the documents under point (a) of Article 89(1) of Regulation (EC) No 1083/2006, as amended, for the operational programme. The application for payment of the final balance and the statement of expenditure will be corrected accordingly⁶ (see revised guidance note COCOF/07/0074/05 on Article 55 of Regulation (EC) No 1083/2006 – Revenue-Generating Projects for more details).

The Commission, OLAF and the Court of Auditors may audit/investigate operations throughout the three-year document retention period following partial closure and any additional period due to interruption by legal proceedings or at the request of the Commission. Financial corrections can be imposed on the basis of the findings of such audits/investigations. Any such financial corrections imposed in respect of operations covered by partial closure shall be net: this means that the expenditure concerned cannot be replaced by other eligible expenditure by the Member State. Therefore, the EU funds subject to the correction will be lost for the programme. Where in case of systemic irregularities or serious deficiencies in the management and control system, the amount of a financial correction is calculated using extrapolation or a flat rate, the expenditure of all operations included in partial closure exercises and for which the three-year period for the

⁶ Following the amendment of Article 55 (Council Regulation (EC) No 1341/2008 of 24.12.2008 amending Regulation (EC) No 1083/2006, L 348/19), this provision will be limited to the ERDF and CF.

retention of documents has elapsed will not be taken into account for calculating the final amount of the correction.

It is to be noted, however, that in accordance with Article 88(3) of Regulation (EC) No 1083/2006, as amended, Member States can re-use for new eligible operations the amounts related to irregularities which they detected and corrected themselves regarding operations which were included in partial closure. In such a case, the statement of expenditure referred to in Article 88(2)(a) will be adjusted accordingly and sent to the Commission as soon as corrections are made.

6. DURABILITY OF OPERATIONS

Finally, generally applicable follow-up requirements will have to be carried out on operations concerned by partial closure. Regarding durability of operations and in accordance with Article 57 of Regulation (EC) No 1083/2006, as amended, in case of a substantial modification of an operation, the Member State / managing authority must apply a financial correction proportional to the nature and gravity of the irregularity and the financial loss (in line with Article 98 of Regulation (EC) No 1083/2006, as amended) and send an updated statement of expenditure referred to in Article 88(2)(a). It must also inform the Commission about the cases in the annual implementation report.

ANNEX 1

Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999⁷, as amended

Article 62

Functions of the audit authority

1. The audit authority of an operational programme shall be responsible in particular for:

(...)

(d) by 31 December each year from 2008 to 2015:

(...)

(iii) submitting, where applicable under Article 88, a declaration for partial closure assessing the legality and regularity of the expenditure concerned.

Article 90

Availability of documents

1. Without prejudice to the rules governing State aid under Article 87 of the Treaty, the managing authority shall ensure that all the supporting documents regarding expenditure and audits on the operational programme concerned are kept available for the Commission and the Court of Auditors for:

(a) a period of three years following the closure of an operational programme as defined in Article 89(3);

(b) a period of three years following the year in which partial closure took place, in the case of documents regarding expenditure and audits on operations referred to in paragraph 2. These periods shall be interrupted either in the case of legal proceedings or at the duly motivated request of the Commission.

2. The managing authority shall make available to the Commission on request a list of completed operations which have been subject to partial closure under Article 88.

3. The documents shall be kept either in the form of the originals or in versions certified to be in conformity with the originals on commonly accepted data carriers.

⁷ OJ L 210 of 31 July 2006.

Commission regulation (EC) No 1828/2006 of 8 December 2006 setting out rules for the implementation of Council regulation (EC) No 1083/2006 laying down general provisions on the European Regional development Fund, the European Social Fund and the Cohesion Fund and of Regulation (EC) No 1080/2006 of the European Parliament and the Council on the European Development Fund⁸, as amended⁹

Article 19

Availability of documents

1. For the purposes of Article 90 of Regulation (EC) No 1083/2006, the managing authority shall ensure that a record is available of the identity and location of bodies holding the supporting documents relating to expenditure and audits, which includes all documents required for an adequate audit trail.

2. The managing authority shall ensure that the documents referred to in paragraph 1 are made available for inspection by, and extracts or copies thereof are supplied to, persons and bodies entitled thereto, including at least authorised staff of the managing authority, certifying authority, intermediate bodies and audit authority and the bodies referred to in Article 62(3) of Regulation (EC) No 1083/2006, and authorised officials of the Community and their authorised representatives.

3. The managing authority shall keep information necessary for the purposes of evaluation and reporting, including the information referred to in Article 14, in relation to operations referred to in Article 90(2) of Regulation (EC) No 1083/2006 for the whole of the period referred to in paragraph (1)(a) of that Article.

4. The following at least shall be considered commonly accepted data carriers as referred to in Article 90 of Regulation (EC) No 1083/2006:

- (a) photocopies of original documents;*
- (b) microfiches of original documents;*
- (c) electronic versions of original documents;*
- (d) documents existing in electronic version only.*

5. The procedure for certification of conformity of documents held on commonly accepted data carriers with the original document shall be laid down by the national authorities and shall ensure that the versions held comply with national legal requirements and can be relied on for audit purposes.

6. Where documents exist in electronic version only, the computer systems used must meet accepted security standards that ensure that the documents held comply with national legal requirements and can be relied on for audit purposes.

⁸ OJ L 45 of 15 February 2007.

⁹ Amended by Commission Regulation (EC) 846/2009 of 1 September 2009, OJ L 250 of 23 September 2009.

Article 20

Documents submitted by the certifying authority

(...)

3. *In order to proceed to the partial closure of an operational programme, the certifying authority shall send to the Commission a statement of expenditure referred to in Article 88 of Regulation (EC) No 1083/2006 in the format set out in Annex XIV to this Regulation.*

Article 40

Content of computer system data for exchange

(...)

2. *In addition to paragraph 1, the computer system for data exchange shall contain at least the following documents and data of common interest enabling monitoring to be carried out:*

(...)

(j) the reports and opinion on audits in accordance with the models set out in Annexes VI, VII, VIII, IX and XIII, and correspondence between the Commission and each member State;

(...)

(k) the statements of expenditure concerning partial closure, in accordance with the model set out in Annex XIV;

(...)

ANNEX 2

ANNEX IX

MODEL DECLARATION FOR THE PARTIAL CLOSURE OF OPERATIONAL PROGRAMMES PURSUANT TO ARTICLE 18(5)

To the European Commission, Directorate-General ...

The managing authority for the programme ... (name of operational programme, CCI code number, period) has submitted a statement of expenditure relating to operations (completed as at ... (date up to which operations were completed)/ completed between ... and ... (dates between which operations were completed)) and is applying for partial closure of the programme pursuant to Article 88(2)(b) of Regulation (EC) No 1083/2006 for these operations.

I, the undersigned, representing the ... (name of body designated by the Member State) have examined the results of the audit work carried out on this programme as set out in the annual control reports and annual opinions issued pursuant to Articles 62(1)(d)(i) and (ii) of Council Regulation (EC) No 1083/2006 for the year/years ...

I have planned and performed this work with a view to obtaining a reasonable assurance as to whether the statement of expenditure concerned is correct and valid and the underlying transactions covered by the statement of expenditure are legal and regular.

Opinion

Based on the examination referred to above, it is my opinion that the statement of expenditure on completed operations submitted by the managing authority for the programme ... (name of operational programme, CCI code number, period) for the purpose of partial closure of the programme in respect of operations (completed as at .../completed between ... and ...) presents fairly, in all material respects, the expenditure paid and that the underlying transactions are legal and regular.

Date

...

Signature

...

ANNEX 3

ANNEX V

ANNEX XIV

MODEL STATEMENT OF EXPENDITURE FOR A PARTIAL CLOSURE

Statement of expenditure by priority for a partial closure

Operational Programme reference (CCI No):

Name of programme:

Date of submission to the Commission:

Total certified expenditure of operations completed between/... And 31/12 [year]:

Priority Axis	2007-2015	
	Total amount of eligible expenditure paid by beneficiaries and certified	Corresponding public contribution
<i>Priority Axis 1</i>		
<i>Priority Axis 2</i>		
<i>Priority Axis 3</i>		
Grand total		